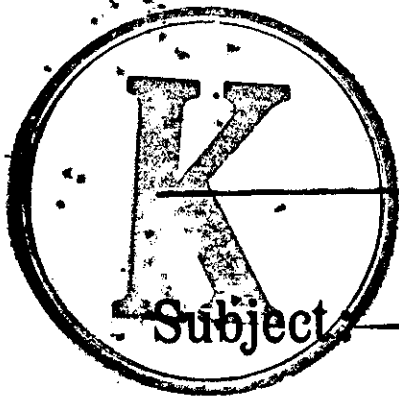


1947.

File No. Indus Relations
II/47

Legal DEPARTMENT
B BRANCH



Rules and Notifications under
the Bombay Industrial Relations
Act 1947

PC 27
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File No. Indus Relation II/47
Std. Sectt. Slip

416/B

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Office of the P.J.A.

The Chairman of the Industrial Condition Enquiry Committee says in his note dated 2nd July at page 15 of the file that he is averse to seeking the help of Ordinances except in desperate cases. He is quite right that the recourse to an Ordinance should be taken very sparingly. It is for the Government to decide in the first place whether they wish to invest the Chairman and Members of the Industrial Conditions Enquiry Committee with the powers claimed by them, namely, (1) the right of entry into any industrial premises (2) the power to call for all relevant documents and (3) the power to summon and examine witnesses on oath.

2. If government agree with the Chairman of the Committee that it is essential to confer these powers on the Committee, an Ordinance is feasible on the subject since the object in view cannot be achieved either under the Bombay Industrial Relations Act, 1946, (Bom. II of 1946) or the Factories Act. (XXV of 1934).

Sd/-

Remembrancer of Legal Affairs.

U.R. to P & S.D., No, 7333 dated the 17th July 1947.

M.R.D.
11-5-56
C.4

The draft Bombay Industrial Relations Rules have been examined also in the light of the further amendments suggested by the P. and S.D. and are in order, as amended, subject to the following remarks.

2. Clause (d) of draft rule 9: This clause is not necessary in view of the amendment made in the opening part of the draft rule.
3. P. and S.D. Rule 21:- Under this rule the employer in an industry to which all or any of the provisions of the Bombay Industrial Relations Act, 1946 (Bom. XI of 1947) have been applied and every employer of an undertaking in such industry which is started after the application of such provisions of the Act to that industry are required to forward to the Registrar a statement as provided therein. This provision will not apply to industries to which the Act applies under sub-section (3) of section 2. As it cannot be the intention to exempt from the requirement of rule 21 industries to which the Act applies under sub-section (3) of section 2 draft rule 21 has been amended so as to make it obligatory both for the employer in an industry to which the provisions of the Act have been applied under sub-section (4) of section 2 and the employer in an industry to which the Act applied under sub-section (3) of section 2 to forward the requisite statement. The employer in an undertaking started after the coming into force of the Act, or, as the case may be, after the application of the provisions of the Act is also required to forward the requisite statement. The P. and S.D. should verify if the revised rule is in accordance with its intention.
4. Rules 22, 24 and 25 have been recast in the light of the further amendments suggested.
5. Rule 35 :- These fees will have to be prescribed in consultation with the Industrial Court. (See section 26(6) of the Act.)
6. Rule 40:- Under section 23 of the Act the manner in which election of the specified number of persons shall be held has to be prescribed. Draft rule 40 provides for the holding of a meeting for the purpose of election but the rule does not state who shall preside over the meeting. Sub-rule (3) has been inserted for the purpose. The P. and S.D. should decide whether the meeting should be presided over by a person elected by the employees or one nominated by the Labour Officer. The P. and S.D. should also consider whether a similar provision should not be made in Rule 39.
7. Rule 47:- The third provision to section 30 of the Act also provides for election in the prescribed manner. The P. and S.D. should decide as to who should preside over the meeting.

as to who should decide as to who should preside over the meeting held under this rule.

8. Rule 67:- Section 60 of the Act requires a Conciliator or a Board to follow in a conciliation proceeding such procedure as may be prescribed. Under this provision it is necessary to prescribe in the rules themselves the whole procedure that has to be followed by a Conciliator or a Board. The power to decide what procedure should be followed in any particular matters cannot be delegated to the Boards proposed in sub-rule(3) of draft rule 67. The P. and S.D. should therefore prescribe the whole procedure and then refer the rule to the R.L.A for security, if necessary. It is presumed that no rules are intended to be made for pre-prescribing the procedure to be followed by a Conciliator.

Sd/-

Remembrancer of Legal Affairs.

H.R. to P. and S.D. No. 8425, dated the 19th August 1947.

M.R.D.-
11-5-56

Office of the R.L.A.

Under sub-section (1) of section 100 of the Bombay Industrial Relations Act, 1946 (Bom. I of 1947), the Provincial Government may constitute a Court of Enquiry consisting of such number of persons as the Provincial Government may think fit. It will, therefore, be feasible for the Government of Bombay to constitute the Industrial Conditions Enquiry Committee appointed under P. & S.D. G.O. No 264/46, dated the 8th November 1946, into a Court of Enquiry under the said section 100(1) after the Act is brought into force. Under section 113(1)(b) and (c) of the said Act, the Court of Enquiry so constituted, shall have the powers mentioned in clauses (ii) and (iii) of the letter dated the 9th June 1947 at page 1. The view expressed by the Chief Secretary to this effect in his note dated the 21st July 1947 at pages 19-20 ante is correct.

Sd/-

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 8243, dated the 11th August 1947.

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Subject to following remarks there is no objection to the changes proposed in rules 29, 30, 31, 32, 40, 43, and 59(4).

2. The qualification that the person to be appointed to preside over a

Labour Court should have practical experience of labour and industrial problems or should have done research in such problems or made a study of labour and industrial laws is not demanded from a Civil Judge. There is no reason why this additional qualification should also be demanded from persons other than Civil Judges who like the Civil Judges are otherwise qualified in law and language. The insistence upon this additional qualification would unduly restrict the field of selection. It is a matter for consideration whether this should not be treated as an additional qualification only for purposes of preference in selection. If this view is accepted the rule should read as follows:-

" 9(1) A person shall not be eligible to be appointed to preside over a Labour Court unless he is or has been a Civil Judge or possesses the following qualifications:-

(a) (i) is a Bachelor of Laws of the University of Bombay, or

(ii) has passed the examination for pleaders held by the High Court, or

(iii) has passed the Advocates' Examination conducted by the Bombay Bar Council, or

(iv) has been admitted to the Bar of England, Northern Ireland or Scotland,

and has practised as an advocate or Pleader in the High Court of Bombay or in the Civil or Criminal Courts subordinate to it for at least seven years;

(b) has sufficient knowledge of any one of the following regional languages of this Province, namely, Gujarati, Marathi and Kanned to enable him to speak, read and write and translate with facility from the written character into English and vice-versa.

" (2) Preference shall be given to a person who have practical experience of labour and industrial problems or has done research in such problems or has made a study of labour and industrial laws."

Rule 30:- The words " for the information of employees" may be deleted. Under section 25 the notice is presumably for the information of the members of the Union and by using the word "employees" we might be travelling beyond the scope of the section. In any case once a notice is put up it

case once a notice is put up it is unnecessary to say that it is for the information of any particular class of persons so long as others are not precluded from seeing it.

Rule 33:- The words "of an approved Union" should be retained.

Rule 35:- In the draft submitted 1st time by this Department, the Note was to enable omitted. It now appears that the intention of the Note was to enable Government to engage senior counsel or legal practitioners of high standing on behalf of the Unions in truly ~~important~~ important matter. Such counsel or practitioners would not naturally be available at the ordinary maximum fees prescribed in the table. The Note, say, therefore, remains but it has been tamed into a sub-rule.

Rule 40:- Under section 23 the manner of election has to be prescribed. Since the draft rule does not prescribe the manner of election, a mere provision as to who should preside at the meeting would not be of much value.

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C.5

much value. That provision may be deleted unless the entire manner of election is going to be prescribed. The same remarks apply to rule 47. The provision in rule 39 prescribing as to who should preside at the meetings may also be deleted.

Section 23 no doubt says that the employees may elect five persons in the prescribed manner. Under the draft rules no elections can take place excepting at a meeting. By making it obligatory upon the Labour Officer to hold a meeting, we are not compelling the employees to elect, for they may even at such a meeting decide not to elect. From the point of view of administrative convenience, it may be more advisable to require the Labour Officer to hold a meeting in each case and leave it to the employees to decide whether they want to elect representatives or not. Sub-rule (1) of rule 4 has been suitably amended.

Rules 25 and 45 have been slightly amended

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11-5-56
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Sd/-
8-9

Remembrancer of Legal Affairs.

W.R.

R.1.10218

Office of the R.L.A.

The draft notifications at pages 3 and 5 as slightly amended are in order.

2. The P. and S.D. should verify that "Walegaon" referred to in the Schedule to the draft notification at page 5 ante is a municipal borough.

Sd/-

for Remembrancer of Legal Affairs.

U.R. to P/ and S.D., No. 9220, dated the 15th September 1947.

M.R.D.
11-5-56
C.5

NOTIFICATION.

Political and Services Department,
Bombay Castle, September 1947.

Bombay
Industrial
Relations
Act, 1946.

No. 978/46- In exercise of the powers conferred by section 9 of the Bombay Industrial Relations Act, 1946 (Bom. I.R. of 1947), the Government of Bombay is pleased to constitute the Labour Courts, specified in column 1 of the Schedule hereto appended having Jurisdiction in the local areas specified against them in column 2 of the said Schedule and to appoint the persons specified in column 3 thereof to preside over the said Courts.

SCHEDULE

<u>Labour Court.</u> 1	<u>Local areas.</u> 2	<u>Name of the person</u> 3
(1) Labour Court, Bombay.	City of Bombay Kurla Municipal Borough Chhatkoper-Kirol Municipal District. Notified areas of Borivli. Bhimwadi Municipal District. Thane Municipal Borough	—
(2) Labour Court Ahmedabad.	Ahmedabad City Municipal Borough. Ahmedabad Cantonment, and the village of Sabarnati. Viramgaon Municipal District. Revenue limits of Gogha. Nadiad Municipal Borough. Broach Municipal Borough. Surat Municipal Borough.	
(3) Labour Court.	Jalgaon Municipal Borough. Chalisgaon Municipal Borough. Amalner Municipal Borough. Dhuleta Municipal Borough. Malegaon Municipal Borough.	
(4) Labour Court, Sholapur.	Poona City Municipal Borough. Poona Suburban Municipal Borough. Poona Cantonment. Haveli Taluka of the Poona District. Karad Municipal District. The area within the jurisdiction of the village panchayat of Lamb in the Satara district. Sholapur Municipal Borough. Barsi Municipal Borough. Revenue limits of Tikekarwadi Solgaon Municipal Borough. Revenue limits of Goliak Hubli Municipal Borough. Gadgaon Bettigeri Municipal Borough Ahmednagar Taluk of Ahmednagar District.	

By order of the Governor of Bombay.

Joint Secretary to Government.

M.R.D.-
11-5-46
C.S.

No. 1237/46- The following draft of a notification which it is proposed to issue under section 123 of the Bombay Industrial Relations Act, 1946 (Bom. XI of 1947), is published as required by sub-section (3) of the said section 123 for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration by the Government of Bombay after a period of three weeks of its publication in the Bombay Government Gazette.

2. Any objections or suggestions which may be received by the Director of Labour Administration, Wellington Cinema Building, Bhobi Talao, Bombay, from any person with respect to the said draft before the expiry of the period aforesaid will be considered by Government

DRAFT NOTIFICATION

In exercise of the powers conferred by section 123 of the Bombay Industrial Relations Act 1946 (Bom. XI of 1947), the Government of Bombay is pleased to amend the Bombay Industrial Relations Rules 1947 as follows namely:-

(1) In rule 29, 30 and 31 of the said Rules, for the words "the Assistant Secretary and the Treasurer", the words "the Assistant Secretary, the Treasurer and every member of the executive" shall be substituted;

By order of the Governor of Bombay.

Joint Secretary to Government.

Office of the R.L.A.

Section 25 of the Bombay Industrial Relations Act, 1946, provides that such officers of an approved union as may be authorised by rules made in this behalf by the Provincial Government shall, in such manner and subject to such conditions as may be prescribed have a right and shall be permitted to do certain things. It is now proposed to amend the rule as to authorise every member of the executive under the section. That would naturally depend upon the question whether a member of the executive can be called an officer; since it is only officers who can be authorised by rules. An officer generally means one who holds an office. It is difficult to describe the membership of the executive as an office in the same sense as that of the President, Treasurer or Secretary. A member of an executive is not a functionary in the same sense as the president, Treasurer or Secretary is. It is because of this difficulty that in cognate enactments the word "officer" is specially defined to include a member of the executive; see the definition in clause (b) of section 2 of the Trade Unions Act, 1926 compare also a similar definition in clause (d) of section 3 of the Bombay Co-operative Societies Act, 1925. It is therefore, doubtful whether a member of the executive can be included in the term "officer." In that view it would not be feasible to authorize such member by a rule. It would be more advisable to incorporate in the Act itself an inclusive definition of the term "officer" on the lines of the definition in the Trade Unions Act, 1926.

Sd/-

12-12

Remembrancer of Legal Affairs.

U.R. to P. & S.D., No. 12031, dated the 13th December 1947.

M.R.D.
11-5-56
C-4

NOTIFICATION.

Political and Services Department,
Bombay Castle, December 1947.

In exercise of the powers conferred by section 100 of the Bombay Industrial Relations Act, 1946, (Bom. XI of 1947), the Government of Bombay is pleased to constitute a Court of Enquiry consisting of:-

Mr. Purnashottam Kanji, B.A., Chairman.	} Members,
Mr. P.V. Gillestian, M.A. A.	
Mr C. Thomas, M.A., LL. B., Director of Labour Information	

and to refer to it the following industrial matters for inquiry, namely,

(1) Whether absenteeism, indiscipline and violent behaviour on the part of the employees in the cotton textile industry in the province of Bombay have increased and whether these factors have contributed, and if so to what extent, to a fall in production compared to the peak war year and the pre-war period.

(ii) To what extent economic privations, lack of facilities and unfair treatment are responsible for the recent manifestations of labour unrest & in the cotton textile industry and estrangement between employer and employee.

By order of the Governor of Bombay .

Joint Secretary to the Government of Bombay,
political and Services Department.

M.R.D. -
11-12-46
C.5

Office of the P.A.S.

As regards the first point referred to in para. 2 of the note of the Joint Secretary Political and Services Department, there is no objection in law to the same persons functioning as members of a non-statutory body like the Industrial Conditions Enquiry Committee and of a statutory body such as the Court of Enquiry constituted under section 100 of the Bombay Industrial Relations Act, 1946. The Industrial Conditions Enquiry Committee will not, therefore, ~~automatically~~ cease to exist as such on the constitution of the Court of Enquiry consisting of its members. The positions will be the same in both the bodies will continue simultaneously with the same persons as members. Such a position in this case, however, will be anomalous. Presumably there is going to be only one enquiry by the members. The powers referred to in section 113 of the Bombay Industrial Relations Act, 1946, can be exercised for the purpose of holding an enquiry under that Act and are not exercisable in connection with an enquiry to be made by a non-statutory body. When any powers are exercised in this case, it would be difficult to say whether they are exercised by the Court of Enquiry constituted under the Act or by the Industrial Conditions Enquiry Committee. If, therefore, it is decided to constitute the Court of Enquiry consisting of the members of the Committee, the best course would be to terminate their appointment as members of the committee.

2. The Bombay Industrial Relations Act, 1946, does not prescribe any procedure for holding an enquiry by a court of Enquiry constituted under section 100 of the Act, nor does it lay down that rules should be framed under the Act in this behalf. In the absence of any such provision in law, it would be open to the Court of Enquiry to follow such procedure as it thinks fit consistently with the principles of natural justice. The Act does not empower Government to prescribe the procedure by notification and the suggestion to that effect made by Joint Secretary, P.A. S.D. is not legally feasible.

3. As regards the second point mentioned in para. 2 of the joint secretary P.A. S.D.'s note, under section 100(2) of the Bombay Industrial Relations Act, 1946, the scope of an enquiry to be made by a Court of Enquiry is confined to industrial matters only as defined in section 3(18) of the Act. The view taken by the joint secretary, P.A. S.D., that the terms of reference made to the Industrial Conditions Enquiry Committee are not all within the scope is correct. Even the draft notification at P. 7 and as it is worded

it is worded is in not intra vires the provisions of section 100 read with section 3(18) of the Act. In clause(1) of the notification the words "and any other" will have to be omitted as they are vague and indefinite and might be construed to extend the scope of the enquiry to matters other than industrial matters. Further, "industrial matter" under section 3(18) means any matter relating to employment, work, wages, hours of work, privileges, rights or duties of employers or employees, or the mode, terms and conditions of employment. Clause (1) of the notification provides for an enquiry being made as to whether the particular factors mentioned therein have contributed, and, if so, to what extent, to a fall in production. "Fall in production" does not itself constitute an industrial matter and unless the intention is that the enquiry into the fall in production is meant for the purpose if the regulation of wages or has a bearing on any of the matters specified in section 3(18), this clause will be ~~considered~~ outside the scope of an enquiry to be made under section 100. If such is the intention, the notification will have to be worded so as to bring out this intention.

4. In view of the legal position set out above in answer to the two questions referred to the R.L.A. it will be for the P.&S.D., to consider from the administrative point of view whether a court of Enquiry should be constituted as proposed consisting of the members of the Industrial conditions Enquiry Committee to achieve the object in the view or whether legislation could be undertaken. It would not be proper to have recourse to an Ordinance in this case as Ordinances are intended to be promulgated only in exceptional cases where the matter, in view of its importance and urgency, cannot wait till the Legislature meets.

Sd/-

Remembrancer of Legal Affairs,

U.R. to P & S.D., No 13023 dated the 16th December 1947.

M.R.D.-
11-5-56
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